

## Message Text

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ACTION EA-13

INFO OCT-01 SS-14 ISO-00 NSC-07 NSCE-00 PM-03 L-02 CIAE-00

INR-10 NSAE-00 RSC-01 SP-01 DODE-00 EB-03 COME-00

STR-01 CEA-01 H-01 AGR-03 TRSE-00 OMB-01 DRC-01 /063 W

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R 110425Z APR 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2634

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 4202

LIMDIS

E.O. 11652: GDS

TAGS: EGEN, ETRD, US, RP

SUBJECT: GOP PROPOSED LAND POLICY STATEMENT AND  
EMBASSY COUNTER-PROPOSAL

REF: MANILA 4200

1. AS INDICATED REFTEL, TEXT OF PROPOSED GOP POLICY  
STATEMENT FOLLOWS:

QUOTE: THE TRADE AGREEMENT BETWEEN THE REPUBLIC OF THE  
PHILIPPINES AND THE UNITED STATES OF AMERICA OTHERWISE KNOWN  
AS THE LAUREL-LANGELY AGREEMENT SHALL TERMINATE ON MIDNIGHT  
OF JULY 3, 1974. THE CORRESPONDING PARITY ORDINANCE  
APPENDED TO THE 1935 CONSTITUTION WHICH IS CO-TERMINUS WITH  
THE EFFECTIVITY OF THE TRADE AGREEMENT SHALL TERMINATE AT  
THE SAME TIME. FURTHERMORE, THE SAME PROVISION IS INCORPORATED  
IN THE 1973 CONSTITUTION (ARTICLE XVII, SEC 11) WHICH STATES  
THAT "THE RIGHTS AND PRIVILEGES GRANTED TO CITIZENS OF THE  
UNITED STATES OR TO CORPORATIONS OR ASSOCIATIONS OWNED  
OR CONTROLLED BY SUCH CITIZENS UNDER THE ORDINANCE APPENDED  
TO THE 1935 CONSTITUTION SHALL AUTOMATICALLY TERMINATE ON THE  
3RD DAY OF JULY, 1974. TITLES TO PRIVATE LANDS ACQUIRED BY  
SUCH PERSONS BEFORE SUCH DATE SHALL BE VALID AS AGAINST  
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OTHER PRIVATE PERSONS ONLY."

IN OTHER WORDS, ALL RIGHTS ACQUIRED BY AMERICAN INDIVIDUAL NATIONALS AND CORPORATIONS OR OTHER ENTITIES WITH AMERICAN EQUITY PARTICIPATION BEYOND 40PERCENT UNDER THE PARITY PROVISION OF THE 1935 CONSTITUTION OVER PUBLIC UTILITIES, PUBLIC LANDS, MINERAL LANDS, TIMBER LANDS AND PRIVATE LANDS AS WELL AS OVER OTHER NATURAL RESOURCES OF THE PHILIPPINES SHALL BE DEEMED TO CEASE AS OF MIDNIGHT OF JULY 3, 1974.

THE TRADE AGREEMENT IN ANTICIPATION OF THE PROBLEMS THAT MAY BE BROUGHT ABOUT BY THE TRANSITION HAS PROVIDED FOR CONSULTATIONS AND IN ARTICLE X IT FURTHER PROVIDED THAT NOT LATER THAN JULY 1, 1971, THE UNITED STATES AND THE REPUBLIC OF THE PHILIPPINES AGREE TO CONSULT WITH EACH OTHER AS TO JOINT PROBLEMS WHICH MAY ARISE AS A RESULT OF OR IN ANTICIPATION OF THE TERMINATION OF THE AGREEMENT.

IN 1966, PRESIDENT MARCOS DISCUSSED THIS MATTER DURING HIS STATE VISIT TO THE UNITED STATES. THE MARCOS-JOHNSON COMMUNIQUE CALLED FOR THE CREATION OF A JOINT RP-US TECHNICAL PANEL WHICH STARTED MEETING IN 1967 ON THE CONCEPTS OF A NEW TREATY AND CONTINUED THEIR DISCUSSIONS UP TO NOW.

MANY COMPANIES HAVE ADJUSTED TO THE REQUIREMENTS OF THE CONSTITUTION SINCE IT IS THE DESIRE OF BOTH THE PHILIPPINES AND THE UNITED STATES NOT TO CONTINUE THE RECIPROCAL PREFERENTIAL AND PARITY TREATMENT OF AMERICANS IN THE PHILIPPINES. A CASE WAS ALSO FILED IN THE COURTS TO DETERMINE WHETHER AMERICANS HAVE THE RIGHT TO ACQUIRE LAND IN THE FIRST PLACE OR CONTINUE WITH THEIR OWNERSHIP AFTER JULY 3, 1974. THE SUPREME COURT HAS DECIDED THAT THE TRADE TREATY DID NOT ACCORD AMERICANS THE RIGHT TO ACQUIRE AGRICULTURAL LAND FOR RESIDENTIAL PURPOSES SINCE THIS IS NOT INCLUDED IN THE TRADE AGREEMENT. THIS DECISION LED TO THE ADOPTION OF A PROVISION IN THE CONSTITUTION THAT TITELS TO PRIVATE LANDS ACQUIRED BY SUCH PERSONS BEFORE JULY 3, 1974 SHALL BE VALID AS AGAINST OTHER PRIVATE PERSONS ONLY. THE STATE THEREFORE HAS THE RIGHT TO ESCHEAT THE PROPERTY IN ACCORDANCE WITH DECLARED NATIONAL POLICY.

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IN VIEW OF THE PROXIMITY OF THE TERMINAL DATE, JULY 3RD, AMERICAN COMPANIES ARE URGED TO COMPLETE THEIR ADJUSTMENT MEASURES BEFORE THAT DATE KNOWING THAT SUFFICIENT TIME HAS BEEN PROVIDED TO ADOPT SUCH MEASURES. IN FACT, THE TRADE AGREEMENT PROVIDES THAT IN THE EVENT THAT THE AGREEMENT IS TERMINATED BY EITHER COUNTRY, A FIVE YEAR NOTICE IS SUFFICIENT AND IN THE EVENT OF VIOLATIONS OF THE AGREEMENT, A SIX-MONTH PHASE OUT PERIOD WAS PROVIDED FOR. SUFFICIENT

TIME THEREFORE HAS BEEN GIVEN TO ADJUST AND THE GOVERNMENT APPRECIATES THE EFFORTS OF MANY WHO CONTRIBUTED TO THE EASE BY WHICH THE TRANSITION MEASURES WERE CARRIED OUT.

TO FURTHER ACCELERATE THE TRANSITION, THE PHILIPPINE GOVERNMENT HAS CREATED A PHILIPPINE PORTS AUTHORITY WHICH CAN HANDLE THE PROBLEMS OF USAGE OF PRIVATE WHARVES AND OTHER INSTALLATIONS WHICH WERE BUILT ON PUBLIC LAND. IN ADDITION, THE NATIONAL DEVELOPMENT COMPANY CAN BE UTILIZED TO HOLD THE LAND AND LEASE ARRANGEMENTS CAN BE ENTERED INTO BEFORE JULY 3, 1974. IT IS IMPORTANT TO KEEP IN MIND THE TERMINAL DATE. HOWEVER, IN ORDER TO GIVE EVERYONE CONCERNED A REASONABLE PERIOD TO MAKE THE NECESSARY ADJUSTMENTS TO AVOID POSSIBLE DISRUPTION OF THEIR ECONOMIC ACTIVITIES, THE PHILIPPINE GOVERNMENT DEEMS IT PROPER AND NECESSARY TO ALLOW A PERIOD OF UP TO DECEMBER 31, 1974 FOR SUCH ADJUSTMENTS TO BE MADE AND, THEREFORE, IT SHALL NOT TAKE ANY PREJUDICIAL ACTION AGAINST SUCH PERSONS OR ENTITIES.

THIS PERIOD OF ADJUSTMENT HAS NO RELATION TO AND IS NOT IN ANYWAY AFFECTED BY THE CONTINUATION OF THE DISCUSSIONS NOW GOING ON BETWEEN THE PHILIPPINE GOVERNMENT AND THE UNITED STATES GOVERNMENT WITH RESPECT TO THEIR FUTURE ECONOMIC RELATIONS, WHICH IS HOPED TO BE CONCLUDED SOON.

WITHIN SUCH PERIOD IT IS EXPECTED THAT THE PROBLEMS WHICH HAVE BEEN STUDIED AND DISCUSSED FOR SO LONG CAN BE RESOLVED FAIRLY TO THE SATISFACTION OF THE AMERICAN INVESTORS. THE AMERICANS AFTER JULY 3, 1974 SHALL BE TREATED LIKE ANY OTHER FOREIGN INVESTOR. AS A SIGN OF FAIR TREATMENT AND OF THE HEALTHY CLIMATE PREVAILING IN THE PHILIPPINES, NEW AMERICAN INVESTMENTS ARE COMING IN IN SUBSTANTIAL AMOUNTS SHOWING THAT EXTRA PRIVILEGES ARE NOT ESSENTIAL FOR THE CONTINUED OPERATION

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OF AMERICAN INVESTMENTS IN THE PHILIPPINES. IT HAS ALSO BEEN PROVEN THAT THE PHILIPPINES HAS TREATED FOREIGN INVESTMENTS FAIRLY AND EQUITABLY. IT HAS BEEN SHOWN THAT OTHER FOREIGNERS LIKE UK, GERMAN, SPANISH, JAPANESE, SWEDISH, SWISS--EVEN IN THE ABSENCE OF ANY TRADE OR INVESTMENT TREATY--CAN COEXIST WITH PHILIPPINE AND AMERICAN INVESTMENTS. THE BASIC GUARANTEES ARE CONTAINED IN THE CONSTITUTION, LAWS AND NATIONAL POLICY.

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ACTION EA-13

INFO OCT-01 SS-14 ISO-00 NSC-07 NSCE-00 PM-03 SP-01 L-02

CIAE-00 INR-10 NSAE-00 RSC-01 DODE-00 EB-03 COME-00

STR-01 CEA-01 H-01 AGR-03 TRSE-00 OMB-01 DRC-01 /063 W

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R 110425Z APR 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2635

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 4202

LIMDIS

2. TEXT OF EMB COUNTER-PROPOSAL THAT REFLECTS THE  
UNDERSTANDING ARRIVED AT BETWEEN THE AMB AND PRESIDENT  
MARCOS IS AS FOLLOWS:

QUOTE: THE TRADE AGREEMENT BETWEEN THE REPUBLIC OF THE  
PHILIPPINES AND THE UNITED STATES OF AMERICAN OTHERWISE  
KNOWN AS THE LAUREL-LANGLEY AGREEMENT SHALL TERMINATE ON  
MIDNIGHT OF JULY 3, 1974. THE CORRESPONDING PARITY ORDINANCE  
APPENDED TO THE 1935 CONSTITUTION WHICH IS CO-TERMINUS WITH  
THE EFFECTIVITY OF THE TRADE AGREEMENT SHALL TERMINATE AT  
THE SAME TIME. FURTHERMORE, THE SAME PROVISION IS  
INCORPORATED IN THE 1973 CONSTITUTION (ARTICLE XVII, SEC.  
11) WHICH STATES THAT "THE RIGHTS AND PRIVILEGES GRANTED  
TO CITIZENS OF THE UNITED STATES OR TO CORPORATIONS OR  
ASSOCIATIONS OWNED OR CONTROLLED BY SUCH CITIZENS UNDER THE  
ORDINANCE APPENDED TO THE 1935 CONSTITUTION SHALL  
AUTOMATICALLY TERMINATE ON THE 3RD DAY OF JULY, 1974.  
TITLES TO PRIVATE LANDS ACQUIRED BY SUCH PERSONS BEFORE  
SUCH DATE SHALL BE VALID AS AGAINST OTHER PRIVATE PERSONS  
ONLY."

THE FOREGOING WAS INTENDED TO APPLY TO ALL RIGHTS  
ACQUIRED BY AMERICAN INDIVIDUAL NATIONALS AND CORPORATIONS  
OR OTHER ENTITIES WITH AMERICAN EQUITY PARTICIPATION  
BEYOND 40PERCENT UNDER THE PARITY PROVISION OF THE 1935  
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CONSTITUTION OVER PUBLIC UTILITIES, PUBLIC LANDS, MINERAL

LANDS, TIMBER LANDS AND PRIVATE LANDS AS WELL AS OVER OTHER  
NATURAL RESOURCES OF THE PHILIPPINES.

THE TRADE AGREEMENT IN ANTICIPATION OF THE PROBLEMS  
THAT MAY BE BROUGHT ABOUT BY THE TRANSITION HAS PROVIDED  
FOR CONSULTATIONS AND IN ARTICLE X IT FURTHER PROVIDED  
THAT NOT LATER THAN JULY 1, 1971, THE UNITED STATES AND  
THE REPUBLIC OF THE PHILIPPINES AGREE TO CONSULT WITH  
EACH OTHER AS TO JOINT PROBLEMS WHICH MAY ARISE AS A  
RESULT OF OR IN ANTICIPATION OF THEIR TERMINATION OF THE  
AGREEMENT.

IN 1966, PRESIDENT MARCOS DISCUSSED THIS MATTER DURING  
HIS STATE VISIT TO THE UNITED STATES. THE MARCOS-  
JOHNSON COMMUNIQUE CALLED FOR THE CREATION OF A JOINT  
RP-US TECHNICAL PANEL WHICH STARTED MEETING IN 1967 ON  
THE CONCEPTS OF A NEW TREATY AND CONTINUED THEIR  
DISCUSSIONS UP TO NOW.

AMONG THE MOST COMPLEX ISSUES WHICH HAVE ARISEN IN  
THESE DISCUSSIONS HAS BEEN THE AFORESAID QUESTION OF  
TITLES AND INTEREST IN REAL PROPERTY ACQUIRED BY  
AMERICANS AND AMERICAN ENTERPRISES SINCE THE PHILIPPINES  
REGAINED ITS INDEPENDENCE. IN VIEW OF THE COMPLEXITY OF  
THIS ISSUE, IT WILL BE THE POLICY OF THE GOVERNMENT OF THE  
PHILIPPINES TO TAKE NO ACTION AFFECTING SUCH TITLES AND  
INTERESTS WHICH WOULD ALTER THE CURRENT SITUATION PENDING  
THE CONCLUSION OF NEGOTIATION ON THIS SPECIFIC ISSUE  
BETWEEN THE TWO GOVERNMENTS. BOTH GOVERNMENTS UNDERTAKE TO  
COMPLETE THESE NEGOTIATIONS IN NO MORE THAN TWELVE  
MONTHS FROM TODAY'S DATE.

THIS DEFERRAL OF ACTION HAS NO RELATION TO AND IS NOT  
IN ANY WAY AFFECTED BY THE CONTINUATION OF THE DISCUSSIONS  
NOW GOING ON BETWEEN THE PHILIPPINE GOVERNMENT AND THE  
UNITED STATES GOVERNMENT WITH RESPECT TO THEIR FUTURE  
ECONOMIC RELATIONS, WHICH ARE HOPED TO BE CONCLUDED SOON.

WITHIN SUCH PERIOD OF DEFERRAL, IT IS EXPECTED THAT THE  
PROBLEMS WHICH HAVE BEEN STUDIED AND DISCUSSED FOR SO LONG  
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CAN BE RESOLVED FAIRLY TO THE SATISFACTION OF THE PARTIES  
CONCERNED. AMERICANS AFTER JULY 3, 1974 SHALL BE TREATED  
LIKE ANY OTHER FOREIGN INVESTOR. AS A SIGN OF FAIR  
TREATMENT AND OF THE HEALTHY CLIMATE PREVAILING IN THE  
PHILIPPINES, NEW AMERICAN INVESTMENTS ARE COMING IN IN  
SUBSTANTIAL AMOUNTS SHOWING THAT EXTRA PRIVILEGES ARE NOT  
ESSENTIAL FOR THE CONTINUED OPERATION OF AMERICAN INVESTMENTS  
IN THE PHILIPPINES. IT HAS ALSO BEEN PROVEN THAT THE

PHILIPPINES HAS TREATED FOREIGN INVESTMENTS FAIRLY AND  
EQUITABLY. IT HAS BEEN SHOWN THAT OTHER FOREIGNERS LIKE UK,  
GERMAN, SPANISH, JAPANESE, SWEDISH, SWISS--EVEN IN THE  
ABSENCE OF ANY TRADE OR INVESTMENT TREATY--CAN COEXIST WITH  
PHILIPPINE AND AMERICAN INVESTMENTS. THE BASIS GUARANTEES  
ARE CONTAINED IN THE CONSTITUTION, LAWS AND NATIONAL  
POLICY. UNQUOTE.  
SULLIVAN

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## Message Attributes

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**TAGS:** EGEN, ETRD, US, RP  
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